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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91181380
Party	Plaintiff E. & J. Gallo Winery
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1 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
2 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

3 _____)
4 E. & J. GALLO WINERY,)

5 Opposer,)

6 v.)

7 MIMULANI AG)

8 Applicant.)
9 _____)

Opposition No. 91181380

Opposition No. 91181381

Opposition No. 91181383

Opposition No. 91181384

Opposition No. 91181385

Opposition No. 91181386

Opposition No. 91181388

(Consolidated)

10
11 **OPPOSER'S REPLY TO APPLICANT'S OPPOSITION TO**
12 **OPPOSER'S MOTION TO REOPEN DISCOVERY PERIOD**

13 Opposer E. & J. Gallo Winery ("Opposer") has moved the Board to reopen the discovery period
14 in this proceeding pursuant to Rule 6(b) of the Federal Rules of Civil Procedure and 37 CFR § 2.116(a).
15 The basis for this motion is that Opposer served its initial written discovery requests on Applicant
16 Mimulani AG ("Applicant") on August 18, 2008, but it did not receive any responses until December
17 19, 2008 – over two months after they were due, and a mere six days before the close of discovery.
18 This delay prevented Opposer from conducting any follow up discovery, in the nature of depositions or
19 otherwise. Indeed, neither party has taken a single deposition in this proceeding.

20 The parties participated in a telephone conference with the interlocutory attorney concerning
21 Opposer's motion on June 30, 2009. Applicant subsequently filed an opposition brief. Opposer hereby
22 replies to arguments raised in Applicant's opposition brief.

23 **REPLY**

24 **A. Applicant's Claim That it Timely Served Discovery Responses is Not Credible.**

25 **1. Applicant Does Not Explain its Delay in Allegedly Resending its Discovery Responses.**

26 As discussed in Opposer's motion and supporting declarations, Opposer did not receive any
27 responses to its discovery requests when they were due on October 6, or within the two months that
28

1 followed. Applicant claims that it timely served responses, but this claim is suspect for several reasons,
2 as detailed in Opposer's motion. For example, Opposer's then counsel, Paul W. Reidl, sent Applicant's
3 counsel a letter on December 9, 2009, referencing Applicant's failure to serve discovery responses. On
4 December 19, 2009, Applicant's counsel, Jeffrey Goehring, finally responded by emailing discovery
5 responses to Mr. Reidl. *If Applicant had truly prepared and served these responses in October, it would*
6 *not have needed over a week to resend them.* [See Mot., 2:10-12; 6:2-3]

7 Opposer's current counsel, Seth I. Appel, raised this issue during the June 30 telephone
8 conference. Mr. Lebow replied that he was not in a position to address it at that time.

9 In its opposition brief, Applicant still does not provide an explanation for its delay. Applicant
10 acknowledges receiving Mr. Reidl's letter on December 11, 2009. [Opp., p. 4] Applicant further
11 acknowledges that it did not send (or, as Applicant claims, resend) its discovery responses until
12 December 19, 2009, over a week later. [Id.] Applicant does not explain why it failed to email these
13 responses to Mr. Reidl immediately upon receiving his letter.

14 In addition to giving credibility to Applicant's version of events, emailing the discovery
15 responses on December 11 rather than December 19 would have allowed Opposer an additional week
16 to take depositions and other follow up discovery before the discovery period closed on December 25.
17 This additional time would have been crucial given the "reasonable notice" requirement for taking a
18 deposition. FRCP 30(b)(1).

19 **2. The Record Belies Applicant's Claim that it Served Documents in Response to**
20 **Opposer's Discovery Requests.**

21 Applicant's claim that it timely served discovery responses is also suspect because Applicant
22 did not serve any documents, or contact Opposer concerning arrangements for a document production,
23 in response to Opposer's 68 document requests. [See Mot. 2:18-21]

24 In its opposition, Applicant points to Opposer's second set of requests for admission, served on
25 December 9, 2008, which refer to "Mimulani AG 000002." It argues that this reference confirms that
26 Opposer received documents in response to its discovery requests in October 2008. [Opp., p. 4] This is
27 not true.

1 Prior to Opposer's second set of requests for admission, Applicant had sent Opposer a
2 settlement offer with four pages of documents attached. These documents were Bates-stamped
3 Mimulani AG 000001-000004. Applicant apparently thought that providing these documents would
4 make Opposer more likely to accept its settlement offer. *Applicant's forwarding of Mimulani AG*
5 *000001-000004 was completely independent of discovery.* [Supplemental Declaration of Paul W. Reidl
6 ("Reidl Supp. Decl."), ¶ 3]

7 Opposer's first set of requests for production of documents included 68 requests. In Applicant's
8 responses (allegedly served on October 6), Applicant agreed to produce documents in response to 54 of
9 these requests. Applicant's claim that its entire document production consisted of four pages of
10 documents (*i.e.*, Mimulani AG 000001-000004) is preposterous. [See Goering Decl., ¶ 4] If Mimulani
11 AG 000001-000004 constituted Applicant's entire document production, then Applicant ignored an
12 overwhelming majority of Opposer's requests altogether. [Opposer's first set of requests for production
13 of documents, and Applicant's responses thereto, are attached as Exhibits A and B to Reidl Supp. Decl.,
14 filed concurrently herewith.]

15 **B. The Pioneer Factors Support Reopening the Discovery Period.**

16 Reopening the discovery period is proper where a party's failure to complete discovery was
17 the result of excusable neglect. FRCP 6(b); 37 CFR § 2.116(a). The parties agree on the relevant
18 factors for determining excusable neglect: (1) the danger of prejudice to the nonmovant; (2) the
19 length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay,
20 including whether it was within the reasonable control of the movant; and (4) whether the movant
21 acted in good faith. *Pumpkin, Ltd. v. The Seed Corps*, 43 USPQ2d 1582, 1997 TTAB LEXIS 24, at
22 *12 (TTAB 1997) (*citing Pioneer Investment Services Co. v. Brunswick Associates Limited*
23 *Partnership*, 507 U.S. 380 (1993)). As discussed in Opposer's motion, all four *Pioneer* factors
24 support reopening the discovery period. [See Mot., 3-6] Opposer's arguments to the contrary are
25 unpersuasive.

26 First, reopening the discovery period will not prejudice Applicant in any meaningful way.
27 [See Mot., 4:1-14] Prejudice in this context means prejudice to Applicant's ability to litigate the

1 case, such as the loss or unavailability of evidence or witnesses that otherwise would have been
2 available. TBMP §509.01(b)(1). See *HKG Industries, Inc. and Floodtronics, Inc. v. Perma-Pipe,*
3 *Inc.*, 49 USPQ2d 1156, at *3 (TTAB 1998) (finding no “measurable prejudice” where “Respondent
4 has made no showing of lost evidence or unavailable witnesses”). Applicant has offered no basis for
5 concluding that a single witness, or a single piece of evidence, will be unavailable during a
6 rescheduled discovery or trial period.

7 In support of its claim of prejudice, Applicant argues only that reopening the discovery
8 period will increase its costs. [Opp. p. 11] While allowing for further discovery will increase
9 Opposer’s costs as well, this is not a relevant consideration. See *Intershop Software Entwicklungs*
10 *GmbH v. Interwave Systems, Inc.*, 2004 TTAB LEXIS 434, at *4 (TTAB 2004) (not citable) (“the
11 ordinary delay and expense associated with prosecuting a Board proceeding, without more, has not
12 been held to constitute prejudice”); *Champagne Louis Roederer v. J. Garcia Carrion, S.A.*, 2004
13 TTAB LEXIS 235, at *6 (TTAB 2004) (not citable) (“the normal delay and expense inherent in
14 prosecuting a case before the Board has not been held to constitute prejudice”). Applicant, aware of
15 the relevant standard, adds that reopening the discovery period will “affect its ability to litigate the
16 case.” [Opp., p. 11] But it does not, and cannot, provide any reason why. Completing discovery
17 now, rather than during the discovery period as originally set, will have no impact on either party’s
18 ability to litigate the case.

19 Second, the length of Opposer’s delay was minimal. [See Mot., 4:15-22] After receiving Mr.
20 Goehring’s December 19 email, Opposer promptly retained outside counsel. Opposer’s new counsel
21 then reached out to Applicant’s counsel, Mr. Goehring and Mark Lebow, by telephone and email.
22 Having received no response, Opposer’s new attorneys further familiarized themselves with the file
23 and researched and drafted their motion to reopen. Opposer’s motion to reopen was on file within
24 two weeks of receiving Mr. Goehring’s email, and only six days after the close of the discovery
25 period. Opposer and its counsel worked with remarkable speed under the circumstances. Cf.
26 *Intershop*, 2004 TTAB LEXIS 434, at *5 (movant acted “swiftly” by filing motion to reopen 19
27 days after expiration of time; motion granted).

1 Applicant does not argue that Opposer delayed in bringing its motion to reopen. Instead, it
2 contends that reopening the discovery period may lead to discovery disputes that will delay
3 resolution of the proceeding. Again, this speculative concern is not relevant to the *Pioneer* analysis.
4 Ironically, the most significant delay in this proceeding to date was caused by Applicant's improper
5 motion to compel, which caused the proceeding to be suspended for eight months. The Board
6 denied this motion on the ground that Applicant failed to satisfy the meet and confer requirements
7 imposed by the Trademark Rules. [Docket No. 16] Had Applicant fulfilled its meet and confer
8 obligations, the parties likely would have been able to resolve their discovery dispute on their own,
9 and this proceeding would now be much farther along.

10 Third, Opposer's delay was not within the reasonable control of Opposer. [See Mot., 4:15-
11 5:13] While the parties dispute whether Applicant properly served timely discovery responses, and
12 whether Applicant served timely discovery responses at all, the fact is that Opposer did not receive
13 discovery responses until December 19, 2008 – six days before the discovery period closed. [Reidl.
14 Decl., ¶ 3; Reidl Supp. Decl., ¶ 2]¹

15 Fourth, Opposer has acted in good faith. While Applicant charges Opposer with bad faith,
16 Opposer respectfully submits that the facts of this dispute – as stated in the parties' filings and at the
17 June 30 telephone conference – strongly suggest otherwise.

18 **C. Follow Up Discovery is Necessary to Fully Develop the Relevant Facts.**

19 Neither party in this proceeding has taken a single deposition. Given the events of the past
20 year, it would be unfair for Opposer to have to go into the trial period in this proceeding without at
21 least deposing Applicant's principal, M. Albu, the one person whom Applicant identified in its
22 initial disclosures as an "individual likely to have discoverable information." Applicant also named
23 Mr. Albu in response to no less than five of Opposer's interrogatories.

24
25 ¹ Applicant goes to great lengths to justify its alleged mailing of its discovery responses to the 95353
26 zip code rather than the 95354 zip code. While Opposer admits there is some confusion concerning
27 the correct zip code of its P.O. Box, Opposer's correspondence address on file with the Board at all
28 relevant times was not a P.O. Box at all. Rather, it was 600 Yosemite Boulevard, Modesto, CA
95354. [See Docket No. 1] Applicant could have – and should have – avoided any uncertainty by
mailing its discovery responses to this address.

1 Furthermore, assuming *arguendo* the discovery responses emailed by Applicant's counsel on
2 December 19 are valid, many of these responses call out for follow up requests. To take just one
3 example, Opposer's request for admission No. 141 asked Applicant to admit that it has not prepared
4 any promotional materials for goods bearing its mark in the United States. Applicant replied with an
5 unequivocal denial. Opposer now needs to follow up with further discovery requests inquiring about
6 the number, nature and scope of such promotional materials.

7 It is impossible to know how many of Applicant's responses to Opposer's document requests
8 require follow up, since Applicant still has not served any documents. [Reidl. Decl., ¶ 7; Reidl Supp.
9 Decl., ¶¶ 2-3]

10 Opposer is entitled to serve 75 interrogatories. 37 CFR § 2.120(d). Yet Opposer served only
11 18 interrogatories in its first set of discovery requests. It deliberately conserved its interrogatories
12 for follow up discovery. In view of the facts underlying this motion and the sparseness of
13 Applicant's discovery responses to date, fairness requires that Opposer be permitted such follow up.

14 CONCLUSION

15 For the reasons stated above, and in Opposer's motion and at the June 30 telephone
16 conference, the Board should grant Opposer's motion and reopen the discovery period for ninety
17 days.

18 Dated: August 31, 2009

Respectfully submitted,

19 HARVEY SISKIND LLP

20 /s/

21 By: Seth I. Appel

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23 San Francisco, CA 94111
24 Telephone: (415) 354-0100
Facsimile: (415) 391-7124

25 Attorneys for Opposer
26 E. & J. Gallo Winery
27
28

E. & J. GALLO WINERY,

Opposer,

Y.

MIMULANI AG

Applicant.

Opposition No. 91181380

Opposition No. 91181381

Opposition No. 91181383

Opposition No. 91181384

Opposition No. 91181385

Opposition No. 91181386

Opposition No. 91181388

(Consolidated)

**SUPPLEMENTAL DECLARATION OF PAUL W. REIDL
IN SUPPORT OF OPPOSER'S MOTION TO REOPEN DISCOVERY PERIOD**

I, Paul W. Reidl, declare as follows:

1. I am former Associate General Counsel for Opposer E. & J. Gallo Winery ("Opposer") and former counsel of record in this proceeding. I make this declaration freely and of my own personal knowledge. If I were called as a witness, I could and would competently testify to the matters set forth.

2. Opposer served its first sets of document requests, interrogatories, and requests for admission in this proceeding on Applicant Mimulani AG (“Applicant”) on August 18, 2008. As stated in my previous declaration in support of Opposer’s motion to reopen, Opposer did not receive any written responses to these requests until December 19, 2008 – two months after they were due, and six days before the close of the discovery period – when they were emailed to me by Applicant’s counsel. Opposer also had not received any documents from Applicant in response to its discovery requests as of the filing of Opposer’s motion to reopen on December 31, 2008. To the best of my knowledge, Opposer still has not received any documents from Applicant in response to its discovery requests.

3. Opposer's dispute with Applicant has been going on for many years in many countries. During the course of this dispute Opposer has received written co-existence demands from Applicant's European executives. One of these demands included as an

1 attachment four pages Bates-stamped as Mimulani AG 000001-000004. (These four pages are
2 included as Exhibit B to the Declaration of Jeffrey Goehring in support of Applicant's
3 opposition to Opposer's motion to reopen.) These four pages appeared to me to be a print-out
4 of a web site that purported to illustrate how the Applicant uses, or intends to use, its mark.
5 Applicant apparently thought that providing this print-out would increase the likelihood that
6 Opposer would withdraw its global oppositions to Applicant's mark and agree to global co-
7 existence. I understood and assumed that Applicant's sending of Mimulani AG 000001-000004
8 was completely independent of discovery and for settlement purposes only, and that it had been
9 Bates stamped by Applicant's counsel because they had reviewed the settlement demand in
10 advance. I never at any time assumed or even contemplated that these four pages constituted a
11 full, complete and comprehensive response by Applicant to my document requests of August 18,
12 2008. The written responses provided by Applicant on December 19, 2008, indicated to me that
13 there were numerous responsive documents that had not been produced.

14 4. On December 9, 2008, Opposer served its second set of requests for admission in
15 this proceeding. I prepared these requests. Request No. 158 asked Applicant to admit that "the
16 document 'Mimulani AG 000002' is an accurate depiction of the manner in which Applicant uses
17 APPLICANT'S MARK on cognac." The document referred to in Request No. 158 – "Mimulani
18 000002" – was sent to Opposer along with a settlement demand, as stated in Paragraph 3 above. It
19 was not served as part of a document production in response to Opposer's discovery requests.

20 5. Attached hereto as Exhibit A is a true and correct copy of Opposer's first set of
21 requests for production of documents in this proceeding, which Opposer served on August 18,
22 2008.

23 6. Attached hereto as Exhibit B is a true and correct copy of Applicant's response to
24 Opposer's first set of requests for production of documents in this proceeding, which Applicant
25 claims to have served on October 6, 2008, but which Opposer did not receive until December 19,
26 2008.

1 I declare under penalty of perjury under the laws of the State of California and the
2 United States of America that the foregoing is true and correct and that this declaration was
3 executed this 27th day of August, 2009, in Modesto, California.
4

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8 _____
9 Paul W. Reidl
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Exhibit A
to Supplemental Declaration
of Paul W. Reidl
In Support Of
Opposer's Motion
to Reopen Discovery Period

Offered by Opposer E. & J. Gallo Winery

E. & J. Gallo Winery v. Mimulani AG

Consolidated Opposition No. 91181380

**Serial Nos. 78877425, 78877442, 78877443,
78877447, 78877450, 78877453, 78877459**

#9

BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

E. & J. GALLO WINERY,

Opposer,

v.

MIMULANI AG,

Applicant.

Cancellation No. 91181380 et al
(Consolidated)

OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, and 37 C.F.R. § 2.120 Opposer, E. & J. Gallo Winery ("Gallo") hereby requests that Applicant produce for inspection and copying the documents and things listed below within 30 days at the offices of Opposer's counsel.

I. DEFINITIONS AND INSTRUCTIONS

The following Definitions and Instructions apply to this Request:

1. The term "PERSON" means any individual, corporation, partnership, association, or other commercial or legal entity.

2. The term "YOU" OR "YOUR" means Mimulani A.G. or any other PERSON acting or purporting to act on its behalf.

3. The term "APPLICANT'S MARK" means the trademark GALLISS

4. The term "DOCUMENTS" has the full extent of its meaning as provided in Rule 34 of the Federal Rules of Civil Procedure, and includes without limitation, any written recorded, computerized, filed, printed or graphic matter, however produced or reproduced, and any drafts, revisions, or amendments thereof. This includes all writings stored in electronic form, including

OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

1 those that may have been "deleted" from a hard drive.

2 5. The terms "AND" as well as "OR" shall be construed either disjunctively or
3 conjunctively so as to require the broadest response to any paragraph of this Request.

4 6. The singular shall always include the plural and the present tense shall always include
5 the past tense.

6
7 7. If YOU refuse to produce any DOCUMENT responsive in whole or in part to any
8 Request, YOU must state each specific ground for YOUR refusal. If YOU claim privilege as a
9 ground for not producing any DOCUMENT in whole or in part, describe the factual basis for YOUR
10 claim of privilege in sufficient detail so as to permit the TTAB to adjudicate the validity of the claim.
11 At a minimum, this must include for each DOCUMENT so withheld: the author(s); the addressee(s)
12 and person(s) copied; the general subject matter of the DOCUMENT; the date of the DOCUMENT;
13 and the specific grounds for withholding the DOCUMENT. If YOU object to producing any part of
14 any DOCUMENT, YOU must produce the portions of the DOCUMENT to which you do not object.

15
16 8. If any portion of a DOCUMENT is responsive to this Request, then the entire
17 DOCUMENT shall be produced. DOCUMENTS produced pursuant to this Request shall be
18 produced in the order in which they appear in YOUR files, and shall not be shuffled or otherwise
19 rearranged. DOCUMENTS that in their original condition were stapled, clipped, or otherwise
20 fastened together shall be produced in such form.

21
22 9. These requests pertain only to YOUR activities for the United States.

23 **II. REQUESTS FOR PRODUCTION**

24 Applicant is requested to produce the following:

25 1. A representative label for each type of product bearing APPLICANT'S MARK that
26 has been used on goods sold in the United States.

1 2. Representative examples of invoices for sales of goods bearing APPLICANT'S
2 MARK to customers in the United States for each year from 2003 to date.

3 3. All documents concerning the importation of goods bearing APPLICANT'S MARK
4 into the United States.

5 4. Each agreement for the sale of goods bearing APPLICANT'S MARK in the United
6 States.

7 5. All promotional materials used in the United States for goods bearing APPLICANT'S
8 MARK.

9 6. Each document constituting, containing or referencing consumer market
10 research in the United States on APPLICANT'S MARK.

11 7. All marketing or business plans for goods bearing APPLICANT'S MARK in the
12 United States.

13 8. A copy of each trademark search done on behalf of APPLICANT prior to the filing of
14 each of the applications at issue in this proceeding.

15 9. All promotional materials for goods bearing APPLICANT'S MARK in the United
16 States, including by way of example but without limitation on the generality of the foregoing:

17 a. Each print ad;

18 b. Each television ad;

19 c. Each radio ad;

20 d. Each point of sale display piece; and

21 e. A sample of each marketing accessory, such as shirts, caps, aprons, etc., that
22 bear APPLICANT'S MARK; and

23 10. Each media review in a United States publication for goods bearing APPLICANT'S
24 MARK.

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28 *OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS*

1 11. Each consumer research study of the demographics of actual or potential consumers of
2 goods bearing APPLICANT'S MARK.

3 12. All documents concerning the selection and adoption of APPLICANT'S MARK.

4 13. All documents referencing or discussing GALLO.

5 14. All documents reflecting or constituting communications between YOU and any
6 actual or potential United States importers of goods bearing APPLICANT'S MARK.
7

8 15. Each consumer complaint from the United States about YOUR goods.

9 16. All documents evidencing, discussing, or constituting consumer confusion or
10 association between goods bearing APPLICANT'S MARK and GALLO or the GALLO MARK.

11 17. Each DOCUMENT memorializing, reflecting, discussing or describing each instance
12 in which any PERSON has stated that or asked, specifically or in substance, whether goods bearing
13 APPLICANT'S MARK were licensed by, associated with, affiliated with, owned by, in partnership
14 with, or associated in any way with GALLO.
15

16 18. Each DOCUMENT constituting, reflecting or discussing any actual or contemplated
17 license to third parties to use APPLICANT'S MARK on or in connection with goods and services.

18 19. Each newspaper, magazine or trade press article discussing, describing or commenting
19 on Applicant's goods bearing APPLICANT'S MARK.

20 20. Each DOCUMENT concerning consumer understanding in the United States of the
21 term "Galliss."
22

23 21. Each DOCUMENT concerning consumer understanding in the United States of the
24 term "Gallo."

25 22. Each DOCUMENT that YOU will rely on or are relying on to support the responses in
26 your Answer to the Notice of Opposition in this proceeding.
27

1 23. Each witness statement provided in connection with this opposition.

2 24. Each DOCUMENT concerning: (a) Opposer, (b) YOUR awareness of Opposer, (c)
3 Opposer's GALLO MARK, and (d) YOUR claims in this opposition.

4 25. All DOCUMENTS referring to or constituting content for each web site directed
5 toward consumers in the United States for goods bearing APPLICANT'S MARK.

6 26. If any response to Requests for Admission ~~11134~~ is anything other than an unqualified
7 admission, produce each DOCUMENT that supports YOUR response.

8 27. All DOCUMENTS reflecting or constituting communications between YOU and any
9 actual or potential United States distributor of goods bearing APPLICANT'S MARK.

10 28. All DOCUMENTS reflecting or constituting communications between YOU and any
11 actual or potential United States retailer of goods bearing APPLICANT'S MARK.

12 29. All DOCUMENTS reflecting or constituting communications between YOU and any
13 actual or potential United States importer of goods bearing APPLICANT'S MARK.

14 33. Each Certificate of Label Approval (COLA) for goods bearing APPLICANT'S
15 MARK.

16 34. Each DOCUMENT concerning the use in the United States of the mark depicted in
17 Registration No. 2,992,639.

18 35. Each DOCUMENT concerning the use, promotion and sales in the United States of
19 goods bearing the mark depicted in Registration No. 2,679,551.

20 36. Each DOCUMENT concerning the use, promotion and sales in the United States of
21 goods bearing the mark depicted in Registration No. 1,036,955.

22 37. Each DOCUMENT concerning the use, promotion and sales in the United States of
23 goods bearing the mark depicted in Registration No. 2,992,639.

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OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

1 38. Each DOCUMENT concerning the use, promotion and sales in the United States of
2 goods bearing the mark depicted in Registration No. 2,,896,365.

3 39. Each DOCUMENT concerning the use, promotion and sales in the United States of
4 goods bearing the mark depicted in Registration No. 3,328,960.

5 40. Each DOCUMENT concerning the use, promotion and sales in the United States of
6 goods bearing the mark depicted in Registration No. 2,932,427.

7 41. Each DOCUMENT concerning the use, promotion and sales in the United States of
8 goods bearing the mark depicted in Registration No. 2,934,354.

9 42. Each DOCUMENT concerning the use, promotion and sales in the United States of
10 goods bearing the mark depicted in Registration No. 2,691,812.

11 43. Each DOCUMENT concerning the use, promotion and sales in the United States of
12 goods bearing the mark depicted in Registration No. 2,735,738.

13 44. Each DOCUMENT concerning the use, promotion and sales in the United States of
14 goods bearing the mark depicted in Registration No. 2,099,244.

15 45. Each DOCUMENT concerning the use, promotion and sales in the United States of
16 goods bearing the mark depicted in Registration No. 1,689,225.

17 46. Each DOCUMENT concerning the use, promotion and sales in the United States of
18 goods bearing the mark depicted in Registration No. 1,626,216.

19 47. Each DOCUMENT concerning the use, promotion and sales in the United States of
20 goods bearing the mark depicted in Registration No. 2,327,060.

21 48. Each DOCUMENT concerning the use, promotion and sales in the United States of
22 goods bearing the mark depicted in Registration No. 3,032,659.

23 49. Each DOCUMENT concerning the use, promotion and sales in the United States of
24 goods bearing the mark depicted in Registration No. 2,720,698.

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OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

1 50. Each DOCUMENT concerning the use, promotion and sales in the United States of
2 goods bearing the mark depicted in Registration No. 3,407,520.

3 51. Each DOCUMENT concerning the use, promotion and sales in the United States of
4 goods bearing the mark depicted in Registration No. 3,133,819.

5 52. Each DOCUMENT concerning the use, promotion and sales in the United States of
6 goods bearing the mark depicted in Registration No. 3,056,462.

7 53. Each DOCUMENT concerning the use, promotion and sales in the United States of
8 goods bearing the mark depicted in Registration No. 3,232,488.

9 54. DOCUMENTS sufficient to show the business relationship between APPLICANT and
10 EUROCIS Holdings A/S.

11 55. DOCUMENTS sufficient to show the business relationship between APPLICANT and
12 Internationalnaya Groupa Promexim.

13 56. DOCUMENTS sufficient to show the business relationship between APPLICANT and
14 Zakrytoe Aktsionernoe Obchtchestvo.

15 57. Each DOCUMENT consisting of or constituting the license agreement between
16 Applicant and EUROCIS Holdings A/S, each producer of cognac bearing APPLICANT'S MARK,
17 Internationalnaya Groupa Promexim, Zakrytoe Aktsionernoe Obchtchestvo.

18 58. Each DOCUMENT constituting or reflecting YOUR plans to use the mark GALLISS
19 in the United States.

20 59. Each DOCUMENT constituting or reflecting YOUR plans to use the mark GALLO
21 RANCIO YOUTH in the United States.

22 60. Each DOCUMENT constituting or reflecting YOUR plans to use the mark GALLO
23 RANCIO ADOLESCENCE in the United States.

24 61. Each DOCUMENT constituting or reflecting YOUR plans to use the mark GALLO

25 *OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS*

1 RANCIO MATURITY in the United States.

2 61. Each DOCUMENT constituting or reflecting YOUR plans to use the mark GALLO
3 RANCIO ADULTHOOD in the United States.

4 62. Each DOCUMENT constituting or reflecting YOUR plans to use the mark GALLO
5 RANCIO WISDOM in the United States.

6 63. Each DOCUMENT concerning the meaning of the term "Rancio" as used in
7 Applicant's Marks.

8 64. Each DOCUMENT concerning the development and adoption of APPLICANT'S
9 GALLISS RANCIO YOUTH mark.

10 65. Each DOCUMENT concerning the development and adoption of APPLICANT'S
11 GALLISS RANCIO ADOLESCENCE mark.

12 66. Each DOCUMENT concerning the development and adoption of APPLICANT'S
13 GALLISS RANCIO MATURITY mark.

14 67. Each DOCUMENT concerning the development and adoption of APPLICANT'S
15 GALLISS RANCIO WISDOM mark.

16 68. Each DOCUMENT concerning the development and adoption of APPLICANT'S
17 GALLISS RANCIO ADULTHOOD mark.

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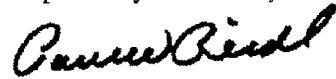
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Dated: August 18, 2008

Respectfully submitted,



Paul W. Reidl
Associate General Counsel
E. & J. Gallo Winery
P. O. Box 1130
Modesto, CA 95353
Tel: (209) 341-4733
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Paul.reidl@ejgallo.com

Attorney for Petitioner,
E. & J. Gallo Winery

Exhibit B
to Supplemental Declaration
of Paul W. Reidl
In Support Of
Opposer's Motion
to Reopen Discovery Period

Offered by Opposer E. & J. Gallo Winery

E. & J. Gallo Winery v. Mimulani AG

Consolidated Opposition No. 91181380

**Serial Nos. 78877425, 78877442, 78877443,
78877447, 78877450, 78877453, 78877459**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

E. & J. GALLO WINERY,

Opposer,

v.

MIMULANI AG,

Applicant.

Cancellation No. 91181160 et al.
(Consolidated)

**APPLICANT'S RESPONSE TO
OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

Applicant Mimulani AG hereby responds to the First Set of Requests for Production of Documents submitted by Opposer E. & J. Gallo Winery.

GENERAL OBJECTIONS

1. Applicant objects to each request to the extent it calls for Applicant to do more than is required under the Federal Rules of Civil Procedure or the rules of the Trademark Trial and Appeal Board.
2. Applicant objects to each request to the extent that it calls for the production of information protected by the attorney-client privilege, the work-product doctrine, or any other recognized privilege.
3. Applicant objects to requests that are unduly burdensome, overly broad, or vague.
4. Applicant objects to requests for information not relevant to a claim or defense of any party or not reasonably calculated to lead to admissible evidence.

5. Until a suitable protective order is in place, applicant objects to any request the response to which would include confidential information.

RESPONSES

1. A representative label for each type of product bearing APPLICANT'S MARK that has been used on goods sold in the United States.

RESPONSE:

Subject to and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

2. Representative examples of invoices for sales of goods bearing APPLICANT'S MARK to customers in the United States for each year from 2003 to date.

RESPONSE:

Subject to and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

3. All documents concerning the importation of goods bearing APPLICANT'S MARK into the United States.

RESPONSE:

Applicant objects that the request for "all documents concerning" is overly broad and vague. Subject to and without waiver of this objection or its general objections, Applicant states that it will produce a representative sample of non-privileged documents within its possession,

custody, or control, if any, directly related to the importation of goods bearing APPLICANT'S MARK.

4. Each agreement for the sale of goods bearing APPLICANT'S MARK in the United States.

RESPONSE:

Subject to and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

5. All promotional materials used in the United States for goods bearing APPLICANT'S MARK.

RESPONSE:

Subject to and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

6. Each document constituting, containing or referencing consumer market research in the United States on APPLICANT'S MARK.

RESPONSE:

Subject to and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

7. All marketing or business plans for goods bearing APPLICANT'S MARK in the United States.

RESPONSE:

Subject to and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

8. A copy of each trademark search done on behalf of APPLICANT prior to the filing of each of the applications at issue in this proceeding.

RESPONSE:

Subject to and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

9. All promotional materials for goods bearing APPLICANT'S MARK in the United States, including by way of example but without limitation on the generality of the foregoing:

- a. Each print ad;
- b. Each television ad;
- c. Each radio ad;
- d. Each point of sale display piece; and
- e. A sample of each marketing accessory, such as shirts, caps, aprons, etc.,
that bear APPLICANT'S MARK; and

RESPONSE:

Applicant objects to this request as cumulative with request No. 5.

10. Each media review in a United States publication for goods bearing APPLICANT'S MARK.

RESPONSE:

Subject to and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

11. Each consumer research study of the demographics of actual or potential consumers of goods bearing APPLICANT'S MARK.

RESPONSE:

Applicant objects to this request as cumulative with request No. 6 and as not being limited in geographic scope to the United States.

12. All documents concerning the selection and adoption of APPLICANT'S MARK.

RESPONSE:

Subject to and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

13. All documents referencing or discussing GALLO.

RESPONSE:

Subject to and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

14. All documents reflecting or constituting communications between YOU and any actual or potential United States importers of goods bearing APPLICANT'S MARK.

RESPONSE:

Subject to and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

15. Each consumer complaint from the United States about YOUR goods.

RESPONSE:

Subject to and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

16. All documents evidencing, discussing, or constituting consumer confusion or association between goods bearing APPLICANT'S MARK and GALLO or the GALLO MARK.

RESPONSE:

Applicant objects to the term "GALLO MARK" as this term is not a defined term in the Definitions and Instructions section of Opposer's requests. Subject to and without waiver of this objection or its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

17. Each DOCUMENT memorializing, reflecting, discussing or describing each instance in which any PERSON has stated that or asked, specifically or in substance, whether goods bearing APPLICANT'S MARK were licensed by, associated with, affiliated with, owned by, in partnership with, or associated in any way with GALLO.

RESPONSE:

Subject to and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

18. Each DOCUMENT constituting, reflecting or discussing any actual or contemplated license to third parties to use APPLICANT'S MARK on or in connection with goods and services.

RESPONSE:

Subject to and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

19. Each newspaper, magazine or trade press article discussing, describing or commenting on Applicant's goods bearing APPLICANT'S MARK.

RESPONSE:

Subject to and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

20. Each DOCUMENT concerning consumer understanding in the United States of the term "Galliss."

RESPONSE:

Subject to and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

21. Each DOCUMENT concerning consumer understanding in the United States of the term "Gallo."

RESPONSE:

Subject to and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

22. Each DOCUMENT that YOU will rely on or are relying on to support the responses in your Answer to the Notice of Opposition in this proceeding.

RESPONSE:

Applicant objects to this request as premature, overly broad, and vague.

23. Each witness statement provided in connection with this opposition.

RESPONSE:

Applicant objects to this request premature, overly broad, and vague.

24. Each DOCUMENT concerning: (a) Opposer, (b) YOUR awareness of Opposer, (c) Opposer's GALLO MARK, and (d) YOUR claims in this opposition.

RESPONSE:

Applicant objects to this request as vague and overly broad.

25. All DOCUMENTS referring to or constituting content for each web site directed toward consumers in the United States for goods bearing APPLICANT'S MARK.

RESPONSE:

Subject to and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

26. If any response to Requests for Admission 1-134 is anything other than an unqualified admission, produce each DOCUMENT that supports YOUR response.

RESPONSE:

Applicant objects to this request as vague, premature, and overly broad.

27. All DOCUMENTS reflecting or constituting communications between YOU and any actual or potential United States distributor of goods bearing APPLICANT'S MARK.

RESPONSE:

Applicant objects to this request as overly broad, unduly burdensome, vague, and irrelevant.

28. All DOCUMENTS reflecting or constituting communications between YOU and any actual or potential United States retailer of goods bearing APPLICANT'S MARK.

RESPONSE:

Subject to and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

29. All DOCUMENTS reflecting or constituting communications between YOU and any actual or potential United States importer of goods bearing APPLICANT'S MARK.

RESPONSE:

Subject to and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

33. Each Certificate of Label Approval (COLA) for goods bearing APPLICANT'S MARK.

RESPONSE:

Subject to and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

34. Each DOCUMENT concerning the use in the United States of the mark depicted in Registration No. 2,992,639.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

35. Each DOCUMENT concerning the use, promotion and sales in the United States of goods bearing the mark depicted in Registration No. 2,679,551.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

36. Each DOCUMENT concerning the use, promotion and sales in the United States of goods bearing the mark depicted in Registration No. 1,036,955.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

37. Each DOCUMENT concerning the use, promotion and sales in the United States of goods bearing the mark depicted in Registration No. 2,992,639.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

38. Each DOCUMENT concerning the use, promotion and sales in the United States of goods bearing the mark depicted in Registration No. 2,,896,365.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

39. Each DOCUMENT concerning the use, promotion and sales in the United States of goods bearing the mark depicted in Registration No. 3,328,960.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

40. Each DOCUMENT concerning the use, promotion and sales in the United States of goods bearing the mark depicted in Registration No. 2,932,427.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

41. Each DOCUMENT concerning the use, promotion and sales in the United States of goods bearing the mark depicted in Registration No. 2,934,354.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

42. Each DOCUMENT concerning the use, promotion and sales in the United States of goods bearing the mark depicted in Registration No. 2,691,812.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

43. Each DOCUMENT concerning the use, promotion and sales in the United States of goods bearing the mark depicted in Registration No. 2,735,738.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

44. Each DOCUMENT concerning the use, promotion and sales in the United States of goods bearing the mark depicted in Registration No. 2,099,244.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

45. Each DOCUMENT concerning the use, promotion and sales in the United States of goods bearing the mark depicted in Registration No. 1,689,225.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

46. Each DOCUMENT concerning the use, promotion and sales in the United States of goods bearing the mark depicted in Registration No. 1,626,216.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

47. Each DOCUMENT concerning the use, promotion and sales in the United States of goods bearing the mark depicted in Registration No. 2,327,060.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

48. Each DOCUMENT concerning the use, promotion and sales in the United States of goods bearing the mark depicted in Registration No. 3,032,659.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

49. Each DOCUMENT concerning the use, promotion and sales in the United States of goods bearing the mark depicted in Registration No. 2,720,698.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

50. Each DOCUMENT concerning the use, promotion and sales in the United States of goods bearing the mark depicted in Registration No. 3,407,520.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

51. Each DOCUMENT concerning the use, promotion and sales in the United States of goods bearing the mark depicted in Registration No. 3,133,819.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

52. Each DOCUMENT concerning the use, promotion and sales in the United States of goods bearing the mark depicted in Registration No. 3,056,462.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

53. Each DOCUMENT concerning the use, promotion and sales in the United States of goods bearing the mark depicted in Registration No. 3,232,488.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

54. DOCUMENTS sufficient to show the business relationship between APPLICANT and EUROCIS Holdings A/S.

RESPONSE:

Subject to and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

55. DOCUMENTS sufficient to show the business relationship between APPLICANT and Internationalnaya Grouppa Promexim.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

56. DOCUMENTS sufficient to show the business relationship between APPLICANT and Zakrytoe Aktsionemoe Obchtchestvo.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

57. Each DOCUMENT consisting of or constituting the license agreement between Applicant and EUROCIS Holdings AIS, each producer of cognac bearing APPLICANT'S MARK, Internationalnaya Grouppa Promexim, Zakrytoe Aktsionemoe Obchtchestvo.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

58. Each DOCUMENT constituting or reflecting YOUR plans to use the mark GALLISS in the United States.

RESPONSE:

Applicant objects to this request as cumulative with request No. 7.

59. Each DOCUMENT constituting or reflecting YOUR plans to use the mark GALLO RANCIO YOUTH in the United States.

RESPONSE:

None.

60. Each DOCUMENT constituting or reflecting YOUR plans to use the mark GALLO RANCIO ADOLESCENCE in the United States.

RESPONSE:

None.

61. Each DOCUMENT constituting or reflecting YOUR plans to use the mark GALLO RANCIO MATURITY in the United States.

RESPONSE:

None.

61. Each DOCUMENT constituting or reflecting YOUR plans to use the mark GALLO RANCIO ADULTHOOD in the United States.

RESPONSE:

None.

62. Each DOCUMENT constituting or reflecting YOUR plans to use the mark GALLO RANCIO WISDOM in the United States.

RESPONSE:

None.

63. Each DOCUMENT concerning the meaning of the term "Rancio" as used in Applicant's Marks.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

64. Each DOCUMENT concerning the development and adoption of APPLICANT'S GALLISS RANCIO YOUTH mark.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

65. Each DOCUMENT concerning the development and adoption of APPLICANT'S GALLISS RANCIO ADOLESCENCE mark.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

66. Each DOCUMENT concerning the development and adoption of APPLICANT'S GALLISS RANCIO MATURITY mark.

RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

67. Each DOCUMENT concerning the development and adoption of APPLICANT'S GALLISS RANCIO WISDOM mark.

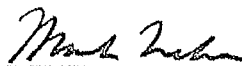
RESPONSE:

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

68. Each DOCUMENT concerning the development and adoption of APPLICANT'S GALLISS RANCIO ADULTHOOD mark.

Subject to this objection and without waiver of its general objections, Applicant states that it will produce the requested non-privileged documents within its possession, custody, or control, if any.

Respectfully submitted,



Mark Lebow

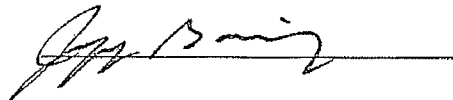
Attorney for Applicant

Young & Thompson
209 Madison Street, # 500
Alexandria, Virginia 22314
Tel: (703) 521-2297

Dated: October 6, 2008

CERTIFICATE OF SERVICE

I hereby certify the foregoing **APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS** was deposited as first class U.S. Mail to Paul W. Reidl, Attorney for Opposer, E. & J. Gallo Winery, P.O. Box 1130, Modesto, CA 95353 this 6th day of October 2008.



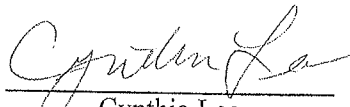
CERTIFICATE OF TRANSMISSION

I hereby certify that true and correct copies of the attached **OPPOSER'S REPLY TO APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO REOPEN DISCOVERY PERIOD** and **SUPPLEMENTAL DECLARATION OF PAUL W. REIDL IN SUPPORT OF OPPOSER'S MOTION TO REOPEN DISCOVERY PERIOD** are being electronically transmitted to the Trademark Trial and Appeal Board on August 31, 2009.

/s/
Seth I. Appel

CERTIFICATE OF MAILING

I hereby certify that true and correct copies of the attached **OPPOSER'S REPLY TO APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO REOPEN DISCOVERY PERIOD** and **SUPPLEMENTAL DECLARATION OF PAUL W. REIDL IN SUPPORT OF OPPOSER'S MOTION TO REOPEN DISCOVERY PERIOD** were served on Applicant via first-class mail, postage prepaid, addressed to Mark Lebow, Young & Thompson, 209 Madison Street, Suite 500, Alexandria, VA 22314, on August 31, 2009.


Cynthia Lee